IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3647 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGVANBHAI ISHWARBHAI BHIL

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 3647 of 2001

MR SATISH R PATEL for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1,3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, the petitioner-detenu challenges the order of detention dated January 17,2001 passed by respondent no.1 - the Commissioner of Police, Ahmedabad City, Ahmedabad in exercise of powers conferred under Section

3(2) of the Gujarat Prevention of Antisocial Activities Act,1985 ("PASA Act" for short).

2. The grounds of order of detention indicate that the Detaining Authority has found two offences registered against the petitioner-detenu under the Bombay Prohibition Act and the Detaining Authority was satisfied that the petitioner-detenu is importing foreign liquor from the adjoining States and carrying on antisocial activities which are detrimental to the public order. Therefore, with a view to prevent the petitioner-detenu from further indulging into that activities, the order of detention was passed by the respondent no.1 - Detaining Authority.

3. Mr.S.R.Patel learned advocate for the petitioner has assailed the order of detention on various grounds. However, the only ground advanced by him is that statements of witnesses were recorded on January 15, 2001 and same were verified by the Detaining Authority on the next date i.e. on January 16, 2001 and, thereafter, immediately on January 17, 2001 the order of detention was passed by the Detaining Authority. Therefore, the Detaining Authority has not applied the mind as there was no sufficient time to examine the possibility of exercise the powers under Section 9(2) of the PASA Act and, therefore, since the order of detention was passed on non-application of mind, the same is liable to be quashed and set aside.

4. I have considered the submissions advanced by Mr. S.R.Patel and Mr.K.T.Dave learned AGP for the respondents, who has opposed this petition by filing Affidavit-in-Reply sworn by Mr.P.C.Pande, Commissioner of Police, Ahmedabad City, Ahmedabad.

5. On the facts and circumstances emerging from the record of the case, it cannot be disputed that the order of detention came to be passed on the basis of statements of two witnesses recorded on January 15, 2001 which were verified by the Detaining Authority on the next date i.e. on January 16, 2001 and thereafter, immediately on January 17, 2001, the Detaining Authority has passed the order of detention. Therefore, it can be said that within 24 hours thereafter the Detaining Authority has recorded the impugned order of detention.

6. In the matter of Kalidas Chandubhai Kahar Vs. State of Gujarat and Others, reported vide 1993 (2) GLR 1659, a Division Bench of this Court (Coram : B.S.Kapadia and N.J.Pandya,JJ) has held that the

Detaining Authority must have sufficient time to examine the possibility of exercising the powers under Section 9(2) of the PASA Act. It was further observed in that case that the proposal was made on 16.10.1992 and detention order was passed on 17.10.1992 and therefore it was held to be a wrong exercise of power under Section 9(2) of the PASA Act which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution.

7. Applying the aforesaid principles enunciated by this Hon'ble Court in the case of Kalidas Chandubhai Kahar (supra), in the instant case, at the cost of repetition, be it stated that statements of witnesses were recorded on January 15, 2001 which were verified by the Detaining Authority on January 16, 2001, whereas the Detaining Authority has passed the order of detention on the next date i.e. on January 17, 2001. Therefore, it is held to be a wrong exercise of power under Section 9(2) of the PASA Act by the Detaining Authority which has affected the detenu's right of making an effective representation under Article 22(5) of the Constitution.

8. In view of the above context and in view of the settled legal position, the impugned order of detention deserves to be quashed and set aside.

9. For the reasons stated in the judgement, this petition is allowed. The order of detention dated 17/1/2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, against the detenu - Bhagvanbhai Ishwarbhai Bhil is hereby quashed and set aside. The detenu shall be released forthwith, if not required in any other case. Rule is made absolute. Direct Service is permitted.

(A.M.Kapadia,J.)

(vipul)